BRIEFING: SEPTEMBER 16, 2014, BOARD MEETING AGENDA ITEM #9

TO: Chairman Richard and Board Members

FROM: Jeff Morales, Chief Executive Officer
Jon Tapping, Risk Manager

DATE: September 16, 2014

RE: Consider Providing Authorization to Negotiate and Bind Excess Liability Umbrella Insurance Policies

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Background

On November 7, 2013, staff presented to the Finance and Audit Committee on a proposal to retain an insurance broker to assist the Authority in potentially obtaining "wrap up" general and excess liability and other specialty insurance policies as necessary to the extent that such policies are in the interest of the State of California. This presentation was based on a report written by the Authority's insurance consultant. That report evaluated different risk financing alternatives and highlighted the benefits of an Authority-controlled excess liability insurance program, while requiring the Design-Builder to continue to carry other coverages, such as primary general liability, worker's compensation, builder's risk, pollution, and professional liability.

A procurement for these insurance policies was subsequently issued under the CEO's standing authority. The Authority selected an insurance broker to obtain quotes to provide excess liability for all Construction Packages. This concept has been designed to cover future construction packages and to complement the contractor-controlled insurance program (CCIP) in effect for CP 1. The principal purposes of this Authority-provided program are to secure high limits of liability insurance coverage and comply with contractual obligations.

The selected broker, Alliant, has found the market to be receptive to this concept. The final step to implementing an excess liability insurance program is to bind coverage, for which Authority staff now seeks Board approval.

Discussion

The reasons for an excess liability insurance program to protect the Authority against major casualty loss are laid out in the consultant's report.

The report considered purchase of *primary* general liability, but determined that primary insurance is better placed with the Design-Builders. Keeping primary general liability and the first layer of excess liability will allow the Design-Builder to pursue its own contractor controlled insurance program if desired, while allowing the Authority a greater degree of control over catastrophic exposures at a lower cost with better protection.

A single, Authority-controlled excess liability insurance program will help ensure that the insurance market has the capacity to meet the high coverage requirements of the high-speed rail program. Instead of requiring the Design-Builders to bind $200 million of coverages for each of the different Construction Packages, the Authority can arrange excess coverage for $500 million in a single package. This cost of insurance was included as part of the overall construction estimate and would have been passed through with markups by the individual Design-Builders. Instead, due to an estimated savings in the range of $2 to 4 million (subject to market verification) staff recommends that the Authority arrange excess coverage directly. These savings could then be used to increase a program wide excess liability tower up to $500 million.

The benefits to this approach are many:

(1) This is an efficient way to meet the insurance requirements of the Authority's agreement with the freight railroads;
(2) This approach addresses capacity concerns of the insurance industry, i.e., providing multiple programs with large insurance limits for each construction package;
(3) It is less expensive for the Authority to buy the upper layers of excess liability once, for the entire IOS, than to have each Design-Builder attempt to buy high limits for its package only;
(4) This approach allows the Authority better risk management through control of the most critical part of its insurance program;
(5) This program will not prevent placement of a CCIP, which may have some benefits to disadvantaged subcontractors through providing Workers' Compensation;
(6) There would be less administrative burden on the Authority, as the Authority would not be required to manage the settlement of lower value claims;
(7) This program is likely to save the Authority money, as placing the excess coverage for these packages all at once should result in a discount for volume purchasing of insurance as discussed in Bickmore's August 26th report (Attached). Rather than paying for the cost of $200 million in limits through the awarded Design Builders' contract price on each individual construction package, the Authority can purchase the coverage all at once; and
(8) Such an approach should also result in lower estimates from competing Design Builders as they would be relieved of the burden of individually placing $200 million in excess and could then remove the cost of such high limits from their overall estimates.

To include CP 2-3 in this program, staff must bring this issue to the Board prior to having the insurance policies negotiated. The Authority seeks Board approval to negotiate and bind the excess liability policies for a not-to-exceed premium of $12,000,000 for a 5-year term. With Board authorization, Authority and its broker will conduct a competitive process culminating in binding coverage for a $500 million Authority-controlled excess liability insurance program.

Recommendations

Staff recommends Board approval to negotiate and bind an excess liability insurance program, in an amount not to exceed $12,000,000.

Attachments

– Draft Resolution #HSRA 14-27
– Bickmore Risk Financing Study Report, dated August 26, 2013